

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP  
15000 SURVEYOR BLVD SUITE 100  
ADDISON, TX 75001  
(972) 386-5040

BDFTE# 00000003778347

Attorney for CITIMORTGAGE, INC.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION

IN RE:	§ CASE NO. 12-70399-HDH-13
	§
MICHAEL DAVID WICKHAM and	§
DIANA MARIE WHITED,	§
Debtor	§ CHAPTER 13
	§
CITIMORTGAGE, INC.,	§
Movant	§ HEARING DATE: 11/20/2013
	§
v.	§ TIME: 10:00 AM
	§
MICHAEL DAVID WICKHAM and	§
DIANA MARIE WHITED; WALTER	§
O'CHESKEY, Trustee	§
Respondents	§ JUDGE HARLIN D. HALE

**MOTION OF CITIMORTGAGE, INC.  
FOR RELIEF FROM STAY OF ACTION AGAINST DEBTOR(S) PURSUANT TO 11  
U.S.C. § 362(a) AND WAIVER OF THIRTY DAY REQUIREMENT PURSUANT TO  
§ 362(e)**

**NOTICE - RESPONSE REQUIRED**  
PURSUANT TO LOCAL BANKRUPTCY RULE 4001-1(b), A RESPONSE IS  
REQUIRED TO THIS MOTION, OR THE ALLEGATIONS IN THE MOTION MAY  
BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT  
MAY BE ENTERED BY DEFAULT.

**ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK OF THE  
UNITED STATES BANKRUPTCY COURT AT EARLE CABELL U.S.  
COURTHOUSE, 1100 COMMERCE STREET, IN ROOM 1254, DALLAS, TX  
75242-1003 BEFORE CLOSE OF BUSINESS ON OCTOBER 29, 2013, WHICH IS AT  
LEAST 14 DAYS FROM THE DATE OF SERVICE HEREOF. A COPY SHALL BE  
SERVED UPON COUNSEL FOR THE MOVING PARTY AND ANY TRUSTEE OR  
EXAMINER APPOINTED IN THE CASE. ANY RESPONSE SHALL INCLUDE A**

**DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE STAY IS TO BE CONTINUED.**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Movant, CITIMORTGAGE, INC., by and through the undersigned attorney, and moves the Court as follows:

1. This Motion is brought pursuant to 11 U.S.C. §362(d) in accordance with Rule 4001 of the Bankruptcy Rules.
2. On or about October 19, 2012, Debtors (hereinafter "Debtor") filed a petition for an order of relief under Chapter 13 of the Bankruptcy Code, 11 U.S.C.
3. At the time of filing the Chapter 13 petition, Movant held a Texas Home Equity Note executed on August 27, 2008, by MICHAEL DAVID WICKHAM in the original amount of FIFTY-ONE THOUSAND DOLLARS AND ZERO CENTS (\$51,000.00) with interest thereon at the rate of 7.250% per annum. A true and correct copy of the Texas Home Equity Note is attached hereto as Exhibit "A".
4. CITIMORTGAGE, INC. services the loan on the property referenced in this Motion for Relief. In the event the automatic stay in this case is modified, this case dismisses, and/or the debtor obtains a discharge and a foreclosure action is commenced on the mortgaged property, the foreclosure will be conducted in the name of CITIMORTGAGE, INC., ("Noteholder").  
  
Noteholder directly or through an agent, has possession of the promissory note. The promissory note is either made payable to Noteholder or has been duly endorsed. Noteholder is the original mortgagee or beneficiary or the assignee of the security instrument for the referenced loan.
5. The indebtedness is secured by a Texas Home Equity Security Instrument dated

August 27, 2008 and executed by MICHAEL DAVID WICKHAM and DIANA MARIE

WHITED on real estate with all improvements known as:

BLOCK 14D, A REPLAT OF BLOCKS 14 & 15, WICHITA GARDENS  
HOMESTEADS, AN ADDITION TO THE CITY OF WICHITA FALLS,  
WICHITA COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN  
VOLUME 23, PAGES 365 & 366, WICHITA COUNTY PLAT RECORDS

A true and correct copy of the Texas Home Equity Security Instrument is attached hereto as Exhibit "B".

6. Debtor have failed to maintain current the post-petition payments due under the Texas Home Equity Note and are presently in arrears for 12 payments through and including the October 1, 2013 payment.

7. The outstanding indebtedness to Movant is \$49,376.28 principal plus accrued interest, late charges, attorneys fees and costs as provided in the Texas Home Equity Note and Texas Home Equity Security Instrument.

8. In accordance with the terms of the Texas Home Equity Note and Texas Home Equity Security Instrument, Movant would allege that it is entitled to reasonable post-petition attorneys fees, including, but not limited to, fees, if any, for the preparation and filing of a proof of claim and fees and costs for the filing of this Motion for Relief from Stay.

9. Debtor have failed to provide adequate protection to Movant which constitutes cause to terminate the automatic stay of 11 U.S.C. §362(a).

10. By reason of the foregoing, Movant requests the Court to terminate the stay so Movant may proceed to foreclose in accordance with its Texas Home Equity Note and Texas Home Equity Security Instrument.

11. Movant reserves the right to assert an 11 U.S.C. § 362(d)(2) Cause of Action, if appropriate, at the hearing on Movant's Motion for Relief.

12. The provision of Rule 4001 (a) (3) should be waived and Movant be permitted to immediately enforce and implement any order granting relief from the automatic stay.

WHEREFORE, Movant prays that this Court enter an order, after notice and hearing, terminating the automatic stay as to Movant; alternatively, Movant be made whole by having all post-petition payments brought current. Movant further prays that the Court waive the provision of Rule 4001 (a) (3) and that CITIMORTGAGE, INC. be permitted to immediately enforce and implement any order granting relief from the automatic stay; that Movant be awarded its reasonable post-petition attorneys fees and expenses for this Motion; and, that Movant be granted such other and further relief as is just.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER  
TURNER & ENGEL, LLP

BY: /s/ DONNA WILKINSON 10/15/2013  
DONNA WILKINSON  
TX NO. 24084098  
15000 SURVEYOR BLVD SUITE 100  
ADDISON, TX 75001  
Telephone: (972) 386-5040  
E-mail: NDECF@BDFGROUP.COM  
ATTORNEY FOR MOVANT

**CERTIFICATE OF CONFERENCE**

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, represents the creditor on the foregoing Motion. The undersigned, an attorney, employed by BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, states that prior to filing the foregoing motion he/she did the following:

Made a good faith effort to negotiate a settlement of the dispute with Debtor's Counsel and/or the Trustee.

NOTES: D.Wilkinson sent an electronic message to the Debtors' Attorney regarding the foregoing Motion. The Debtor's Attorney advised the Motion is opposed.

Date of Conference Call: October 09, 2013 10:39 a.m.

BY: /s/ DONNA WILKINSON 10/15/2013  
DONNA WILKINSON  
TX NO. 24084098  
15000 SURVEYOR BLVD SUITE 100  
ADDISON, TX 75001  
Telephone: (972) 386-5040  
E-mail: NDECF@BDFGROUP.COM  
ATTORNEY FOR MOVANT

**CERTIFICATE OF SERVICE**

I hereby certify that on October 15, 2013, a true and correct copy of the foregoing Motion for Relief from Stay was served via electronic means as listed on the Court's ECF noticing system or by regular first class mail to the parties on the attached list.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER  
TURNER & ENGEL, LLP

/s/ DONNA WILKINSON 10/15/2013

DONNA WILKINSON  
TX NO. 24084098  
15000 SURVEYOR BLVD SUITE 100  
ADDISON, TX 75001  
Telephone: (972) 386-5040  
E-mail: NDECF@BDFGROUP.COM  
ATTORNEY FOR MOVANT

**DEBTORS:**

DIANA MARIE WHITED  
3249 SOUTHWEST DR  
WICHITA FALLS, TX 76306

DIANA MARIE WHITED  
3249 SOUTHWEST DRIVE  
WICHITA FALLS, TX 76306

MICHAEL DAVID WICKHAM  
3249 SOUTHWEST DR  
WICHITA FALLS, TX 76306

MICHAEL DAVID WICKHAM  
3249 SOUTHWEST DRIVE  
WICHITA FALLS, TX 76306

**TRUSTEE:**

WALTER O'CHESKEY  
6308 IOLA AVENUE  
LUBBOCK, TX 79424

**US TRUSTEE:**

1100 COMMERCE STREET, ROOM 976  
EARLE CABELL FEDERAL BLDG  
DALLAS, TX 75242

**DEBTOR'S ATTORNEY:**

MONTE J WHITE  
1106 BROOK AVENUE  
WICHITA FALLS, TX 76301

**PARTIES IN INTEREST:**

CITY OF WF, WFISD, WICHITA COUNTY  
C/O PERDUE BRANDON FIELDER COLLINS&MO  
P.O. BOX 8188  
WICHITA FALLS, TX 76307

INTERNAL REVENUE SERVICE  
POST OFFICE BOX 7346  
PHILADELPHIA, PA 19101-7346

**PARTIES REQUESTING NOTICE:**

FIRST NATIONAL BANK OF BYERS  
HANK RUGELEY, ESQUIRE  
900 EIGHTH STREET  
SUITE 1102  
WICHITA FALLS, TX 76301